SINGAPORE REPORTS

SIA AH KEW & ORS. v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Chua & Kulasekaram JJ.) April 2, 1974]

[Singapore — Criminal Appeal No. 7 of 1973]

Kidnapping Act (Cap. 101), s. 3 — Death sentence — Maximum punishment — Principles applicable and circumstances to be taken into account — Plea of guilty — Carrying arms and weapons — Caning, when to be imposed — Meaning of "rampant".

Criminal Law and Procedure — Sentence — Maximum penalty — Legislature prescribing three categories of punishment — Principles applicable and circumstances to be taken into account.

Criminal Law and Procedure — Sentence — Caning — When to be imposed.

Section 3 of the Kidnapping Act (Cap. 101) provides that a person guilty of an offence under that section shall be punished on conviction with "death or imprisonment for life and shall if he is not sentenced to death, also be liable to caning".

The five appellants pleaded guilty to a charge under section 3 of the said Act. The trial court of two judges sentenced them to death. The trial judges took the view that the alternative sentence of life imprisonment should be imposed only when there were exceptional circumstances which did not justify the imposition of the death sentence. The trial judges were influenced in arriving at the sentence by a statement from the learned Solicitor General that kidnapping was rampant and on the increase in Singapore.

Held: (1) the legislature had given the courts a very limited discretion with regard to sentence by section 3 of the Kidnapping Act the discretion being limited to the imposition of one of three sentences, the maximum being death and minimum being imprisonment for life. The third being imprisonment for life with caning;

(2) the maximum sentence would be appropriate for the worst cases of the offence when the manner of the kidnapping or the acts or conduct of the kidnappers are such as to outrage the feelings of the community;

(3) the trial judges erroneously took the view that the alternative sentence of life imprisonment should be imposed only when there were some very exceptional circumstances which do not justify the imposition of the death sentence and on this erroneous view they came to the conclusion that there was no reason why the death sentence should not be imposed on all the accused;

(4) on the statistics that were before the Court (which were not available to the trial judges) it was clear that the crime of kidnapping for ransom was neither rampant nor on the increase in Singapore;

(5) as two of the appellants were armed with pistols and one with a dagger it was appropriate to impose a sentence of caning on all the accused.

Cases Cited in argument:

(1) *Choh Wai Sung* v. *Public Prosecutor* [1946] M.L.J. 119.

(2) *Tan Chwee Sing* v. *R.* [1962] M.L.J. 101

(3) *Moolchand* v. *State* A.I.R. 1953 All. 202.

COURT OF CRIMINAL APPEAL.

Cheng Tim Pin for the first appellant.

Datuk David Marshall for the second and fifth appellants.

Lim Chor Pee for the third appellant.

S. K. Lee for the fourth appellant.

Abdul Wahab Ghows (Solicitor General) and *Lawrence Ang* (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J. (delivering judgment of the Court): The appellants were charged in the High Court on the following joint charge: —

"You, 1. Sia Ah Kew, 2. Ho Kok Keng, 3. Hoong Khung Cheong, 4. Koo Ah Choo and 5. Lim Chai Thiam, are hereby charged that you on or about the 14th day of March 1972, at about 7.00 p.m. at No. 58 Watten Estate, Singapore, in furtherance of the common intention of all of you, did abduct one Tjioe Kok Hwie with intent to hold the said Tjioe Kok Hwie for ransom, and you have thereby committed an offence punishable under section 3 of the Kidnapping Act (Chapter 101) read with section 34 of the Penal Code (Chapter 103)."

At the trial they pleaded guilty to the charge and were convicted by the trial court which consisted of two judges and all of them were sentenced to death. They now appeal against their sentences. Section 3 of the Kidnapping Act provides as follows: —

"Whoever, with intent to hold any person for ransom, abducts or wrongfully restrains or wrongfully confines such person shall be guilty of an offence and shall be punished on conviction with death or imprisonment for life and shall, *if he is not sentenced to death, also be liable to caning.*"

The legislature has thus given the courts a very limited discretion with regard to sentence, the discretion being limited to the imposition of one of three sentences, the maximum being death and the minimum being imprisonment for life. The third is imprisonment for life with caning.

Before passing the sentences Choor Singh J. the presiding judge said: —

"The crime of kidnapping for ransom is a detestable crime. It is motivated by avarice. It is carefully planned with great deliberation and executed with complete disregard for the anguish and suffering of not only the victim but also of all those who are near and dear to him. The mental torture which the victim's family undergoes while apprehensively awaiting his fate equals or even surpasses that undergone by the victim while in captivity. Kidnapping for ransom is a crime which no civilised society can tolerate and it should be firmly rooted out. It is therefore imperative that the courts should impose deterrent sentences on persons convicted of kidnapping so that it is brought home to all would-be kidnappers that it does not pay to commit this crime in Singapore.

Much has been made by counsel for the defence of the fact that the accused have pleaded guilty. We have taken this fact into consideration. We are fully aware that *a plea of guilty is a mitigating factor which the court must take into consideration in assessing the sentence to be imposed* on an accused who has pleaded guilty. Normally in the case of an offence punishable with imprisonment, a plea of guilty warrants some leniency being shown to the accused and this is reflected in the term of imprisonment imposed on him. In the case of kidnapping for ransom, the punishment prescribed by Parliament clearly indicates the gravity with which this crime should be viewed. Parliament has given the courts a very limited discretion. The offence is punishable with death or life imprisonment. If this court accepts the contention that an accused convicted of kidnapping should not be hanged because he has pleaded guilty, it would be creating a precedent which would be not only dangerous but also contrary to public interest. It would give would-be kidnappers the impression that they can, if caught, always escape the death penalty by pleading guilty. On that basis no kidnappers would ever be hanged and the law would be completely frustrated. It is true that Parliament has vested the court with a discretion in the matter of sentence, but such discretion has to be exercised judicially in the light of the considerations applicable to the case. It is no doubt a very grave responsibility but where the facts are clear and the circumstances of the case warrant it, the court should not hesitate from its duty. In our judgment, *a plea of guilty alone* does not entitle the accused to the lesser *sentence of life imprisonment. The court should pass sentence on the accused in the light of all the facts and surrounding circumstances of the case including of course the plea of guilty* if the accused has so pleaded. Hard and fast rules cannot be laid down and the determination of the right measure of punishment must depend on the variety of considerations that apply in the case before the court."

We agree with these general observations though there is one other important factor which ought to be considered in the vast majority of criminal offences when judicially deciding what would be the appropriate sentence. It is a long and well established principle of sentencing that the legislature in fixing the maximum penalty for a criminal offence intends it only for the worst cases. However, in the case of the offence of kidnapping for ransom the discretion given to the courts as regards the sentence is, as earlier stated, very limited in scope. In our opinion the maximum sentence prescribed by the legislature would be appropriate where the manner of the kidnapping or the acts or conduct of the kidnappers are such as to outrage the feelings of the community.

In the present case the trial judges, in our opinion erroneously, took the view that the alternative sentence of life imprisonment should be imposed only when there are some very exceptional circumstances which do not justify the imposition of the death sentence and on this erroneous view they came to the conclusion that there was no reason why the death sentence should not be imposed on all the accused.

Another factor which influenced the trial judges' decision was their view, based on a statement by the Solicitor-General that kidnapping is rampant in Singapore, that this type of crime is on the increase in Singapore. We have before us an official communication which was not available to the trial judges, which reveals that for the past four years from 1970 to 1973 the total number of persons kidnapped for ransom was six, one in each of the years 1970 and 1972 and two in each of the years 1971 and 1973. On these statistics it is clear that the crime of kidnapping for ransom is neither rampant nor on the increase in Singapore.

Accordingly, we must now consider on all the facts and circumstances whether, in the case of each appellant, the sentence of death ought to stand. The admitted facts before the court are as follows. On 14th March 1972 the five appellants entered the house of the victim with the intention of kidnapping him for ransom. Two of them entered the house through the kitchen door at the back and the other three gained admission by the front door which was opened for them by a daughter of the victim. They were told the victim was upstairs. While two of them remained downstairs guarding the victim's children, the other three, two of whom carried pistols and the third a dagger, rushed upstairs where they confronted the victim and his son and took them downstairs after tying the victim's son's hands with wire. Downstairs the victim was blindfolded with a piece of plaster and the children were told not to make a noise or report to the police. Then the second and fourth appellants led the victim out of the house into a waiting car leaving the other three appellants to guard the children until the victim had been safely driven away. A few moments later they left after warning the children that if they valued their father's life they should not make a report to the police.

The victim was taken to a house where he was kept blindfolded for nine days except on four occasions when the blindfold was removed to enable him to write to his wife and fellow directors of his company. When sleeping, his hands and legs were also tied with straps. Negotiations for the victim's release were first conducted over the telephone and at a face-to-face negotiation between the fourth appellant and a business associate of the victim $500,000 was demanded. Eventually at a later meeting between the victim's wife, his business associate and the fourth appellant the ransom was agreed at $50,000 and on the seventh day after the kidnapping the victim's wife handed over to the fourth appellant $50,000 in $50 notes and $10 notes. Two days later the victim was released.

The first appellant was arrested on 4th April 1972 at Seremban, Malaysia after he had earlier that day deposited ten $50 notes, part of the ransom money, into his savings account with a bank at Kajang. On 7th April 1972 the second appellant was arrested in a house in Singapore and he had in his possession $350, part of the ransom money. On 20th April 1972 the third appellant was arrested. The fourth appellant was arrested when he arrived at Subang Airport, Kuala Lumpur on 20th April 1972. The fifth appellant was arrested as he got off a plane at Singapore Airport on 12th May 1972. In all $6,000 of the ransom money was recovered.

The second appellant had previously been convicted on 10th November 1962 of armed robbery and sentenced to 7 years imprisonment. The third appellant had a previous conviction on 16th October 1961 for the offence of house trespass. The other appellants had no previous convictions. In their mitigation plea, all the appellants alleged that the master mind behind the kidnapping was another person who had enticed or persuaded each of them to take part in it. They all stressed that the victim was kindly treated and no violence was shown towards him while under captivity.

In our judgment, the facts and circumstances do not point to this case as being one in which the maximum sentence of death would be the appropriate sentence to impose. However, having regard to the fact that two of the appellants were armed with pistols and one with a dagger, the manner in which they effected the abduction of the victim and their treatment of the victim's household we consider it appropriate to impose a sentence of caning on each of them.

Accordingly, for all these reasons, we set aside the sentences of death and substitute therefor the following sentences: —

The first appellant is sentenced to life imprisonment and to six strokes of the cane.

The second appellant is sentenced to life imprisonment and to twelve strokes of the cane.

The third appellant is sentenced to life imprisonment and to nine strokes of the cane.

The fourth appellant is sentenced to life imprisonment and to six strokes of the cane.

The fifth appellant is sentenced to life imprisonment and to six strokes of the cane.

Order accordingly.

Solicitors: *Yap & Yap; David Marshall; Chor Pee & Hin Hiong; S. K. Lee & Co.*